

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(220)

CRM-M-23361-2022
Date of Decision: 12.09.2022

Vikas

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Parminder Singh, Advocate for the petitioner.

Mr. B.S. Virk, D.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.376 dated 24.8.2021 under sections 363, 366-A, 376(2)(n) IPC and section 6 of POCSO Act, registered at Police Station, Tarori, district Karnal.

As per factual matrix, the FIR in question was lodged by the father of the prosecutrix namely Rajesh, wherein it was alleged that his daughter i.e. the prosecutrix, who was 15 years of age went missing on 21.8.2021 in the night when she had gone to the house of her Mausi (maternal aunt). On receiving the information they started searching her, however, failed to do so. Thereafter, it was suspected that Vikas son of Subhash had enticed her away. A request was made to take legal action against the culprit.

The investigation commenced. During investigation the prosecutrix was recovered 9.9.2021. She was medically examined and produced before the learned Judicial Magistrate concerned for recording her

statement under section 164 Cr.P.C. The petitioner was arrested on the very next day i.e. on 10.9.2021. He approached the court of Addl. Sessions Judge-cum Fast Track Special Court, Karnal for grant of bail, however, after hearing the parties, the same was declined vide order dated 30.11.2021. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in the present case. He submits that both prosecutrix and petitioner were in consensual relationship. He submits that there was no coercion on the part of the petitioner of enticing her away. It is submitted that as their relationship was not acceptable to the family members of the prosecutrix, hence, the present FIR was lodged on the basis of false and frivolous allegations. He submits that the prosecutrix went missing from her house on 21.8.2021 and thereafter she was recovered on 9.9.2021 i.e. after about 18-19 days. Counsel submits that during this period both petitioner and prosecutrix lived together in public places and travelled by public transports. It is submitted that even in her statement recorded under section 164 Cr.P.C prosecutrix deposed that she was in consensual relationship with the petitioner and she got married with him as well. To buttress his arguments, counsel submits that even during the course of trial the prosecutrix, her father and mother have been examined as PW-1 PW-2 and PW-3 respectively and they have not supported the case of prosecution and hence were declared hostile. Counsel submits that case of the prosecution has fallen flat and hence further incarceration of the petitioner is not warranted. He submits that petitioner is a young boy at the

threshold of his life. Counsel submits that petitioner has no criminal antecedents and he deserves to be granted the benefit of bail.

On the other hand, learned State counsel submits that there are specific allegations against the petitioner. He submits that even if it is assumed that the prosecutrix was a consenting party, still her consent has no legal sanctity as she was a minor at the time of occurrence. He submits that prosecutrix was medically examined and after conducting ultrasound she was found to be about six weeks pregnant. However, he candidly admits that prosecutrix, her father and mother have been examined by the Trial Court and they have not supported the case of prosecution and thus were declared hostile. It is submitted that out of total 17 prosecution witnesses, 7 have been examined. He further submits that as per information provided to him petitioner is not involved in any other case.

I have heard learned counsel for the parties at length and have gone through the records carefully.

Admittedly, the prosecutrix went missing from her home on 21.8.2021 and thereafter she was recovered 9.9.2021. In her statement recorded under section 164 Cr.P.C the prosecutrix deposed that she was in consensual relationship with the petitioner and she wanted to marry him. The prosecutrix and her parents have been examined before the learned Trial Court and they have not supported the case of prosecution. There is nothing on record to show that petitioner has any criminal antecedents. The veracity of the allegations levelled against the petitioner would be assessed by the Trial Court only upon conclusion of the trial. This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation

of the complete evidence to be led by both the sides before the Trial Court.

The trial would take sufficiently long time in its conclusion.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to the satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

12.09.2022

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No